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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-201-842]

Large Residential Washers from Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

SUMMARY: We preliminarily determine that large residential washers (washers) from Mexico are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act).

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brandon Custard, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1766 or (202) 482-1823, respectively.

Preliminary Determination

We preliminarily determine that washers from Mexico are being sold, or are likely to be sold, in the United States at LTFV, as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the “Suspension of Liquidation” section of this notice.

Background

Since the initiation of this investigation on January 19, 2012, the following events have occurred.¹

On February 16, 2012, we selected the three largest producers/exporters of washers from Mexico as the mandatory respondents in this proceeding. See memorandum entitled “Selection of Respondents for Individual Review,” dated February 16, 2012.

On February 21, 2012, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of washers from Mexico are materially injuring the United States industry.²

On March 5, 2012, we issued section A of the questionnaire (i.e., the section covering general information), as well as sections B through E of the questionnaire (i.e., the sections covering comparison market sales, U.S. sales, cost of production (COP) information, and further manufacturing information, respectively) to Electrolux Home Products, Corp. NV/ Electrolux Home Products De Mexico, S.A. de C.V. (Electrolux), Samsung Electronics Mexico S.A. de C.V. (Samsung), and Whirlpool International S. de R.L. de C.V. (Whirlpool).

We received a response to section A of the questionnaire from Electrolux in April 2012, and to sections B, C, and D of the questionnaire in May 2012. No response to section E of the questionnaire was necessary. On March 23 and March 26, 2012, respectively, Samsung and Whirlpool submitted letters informing the Department that they would not be responding to the questionnaire. See “Application of Facts Available” section, below.

¹ See Large Residential Washers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations, 77 FR 4007 (January 26, 2012) (Initiation Notice).

² See ITC Investigation Nos. 701-TA-488 and 731-TA-1199-1200 (Publication No. 4306).

On May 10, 2012, Whirlpool Corporation (hereafter, the petitioner) requested that the date for the issuance of the preliminary determination in this investigation be fully extended pursuant to section 733(c)(1) of the Act and 19 CFR 351.205(e). On May 16, 2012, pursuant to sections 733(c)(1)(A) and (c)(2) of the Act and 19 CFR 351.205(f), the Department postponed the preliminary determination until no later than July 27, 2012.³

On May 17, 2012, the petitioner submitted a request for the Department to amend the scope of this and the concurrent antidumping and countervailing duty investigations of washers from the Republic of Korea (Korea), and to exclude certain products from those investigations. Samsung Electronics Co., Ltd (Samsung Korea) and LG Electronics Inc. (LG), respondents in the antidumping and countervailing duty investigations of washers from Korea, objected to the petitioner's scope exclusion request on May 23 and May 24, 2012, respectively. On July 11, 2012, General Electric Company and its operating division GE Appliances & Lighting (GE), a domestic producer and importer of washers, declared its support for the petitioner's scope exclusion request. On July 18, 2012, Staber Industries, Inc. (Staber), a domestic producer of washers, also filed a letter in support of the petitioner's scope exclusion request. See "Scope Comments" section of this notice.

On May 21, 2012, the petitioner alleged that Electrolux made third country sales below the COP and, therefore, requested that the Department initiate a sales-below-cost investigation of Electrolux. On June 5, 2012, the Department initiated a sales-below-cost investigation of Electrolux. See the "Cost of Production Analysis" section, below.

³ See Large Residential Washers From the Republic of Korea and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 77 FR 30261 (May 22, 2012).

We issued supplemental questionnaires from May through July 2012, and we received responses to these supplemental questionnaires from May through July 2012.⁴

On June 11, 2012, the petitioner alleged that targeted dumping was occurring with respect to washers produced and exported from Mexico by Electrolux.

On July 13, 2012, Electrolux requested a postponement of the final determination.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

Pursuant to section 735(a)(2) of the Act, on July 13, 2012, Electrolux requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the Federal Register, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative for Electrolux, (2) Electrolux accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are

⁴ We did not consider any data submissions received after July 17, 2012, for purposes of the preliminary determination.

granting Electrolux's request and are postponing the final determination until no later than 135 days after the publication of this notice in the Federal Register. Suspension of liquidation will be extended accordingly.

Period of Investigation

The period of investigation (POI) is October 1, 2010, through September 30, 2011. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (i.e., December 2011).

Scope of Investigation

The product covered by this investigation is all large residential washers and certain subassemblies thereof from Mexico.

For purposes of this investigation, the term "large residential washers" denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) all assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) at least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs⁵ designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets⁶ designed for use in large residential washers which

⁵ A "tub" is the part of the washer designed to hold water.

⁶ A "basket" (sometimes referred to as a "drum") is the part of the washer designed to hold clothing or other fabrics.

incorporate, at a minimum: (a) a side wrapper;⁷ (b) a base; and (c) a drive hub;⁸ and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term “stacked washer-dryers” denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term “commercial washer” denotes an automatic clothes washing machine designed for the “pay per use” market meeting either of the following two definitions:

- (1) (a) it contains payment system electronics;⁹ (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;¹⁰ or
- (2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of

⁷ A “side wrapper” is the cylindrical part of the basket that actually holds the clothing or other fabrics.

⁸ A “drive hub” is the hub at the center of the base that bears the load from the motor.

⁹ “Payment system electronics” denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

¹⁰ A “security fastener” is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a “center pin reject” feature to prevent standard Allen wrenches or Torx drivers from working.

importation) such that, in normal operation,¹¹ the unit cannot begin a wash cycle without first receiving a signal from a bona fide payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR § 429.12 and 10 CFR § 429.20, and in accordance with the test procedures established in 10 CFR Part 430.

The products subject to this investigation are currently classifiable under subheading 450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations,¹² in our Initiation Notice we set aside a period of time for parties to raise issues regarding product coverage, and

¹¹ "Normal operation" refers to the operating mode(s) available to end users (i.e., not a mode designed for testing or repair by a technician).

¹² See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

encouraged all parties to submit comments within 20 calendar days of publication of the Initiation Notice. No interested party submitted comments during that period. However, on May 17, 2012, the petitioner indicated that it wanted to amend the scope of the investigations, and requested that the Department exclude automatic washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet from the scope of this investigation and the concurrent antidumping and countervailing duty investigations of washers from Korea. Subsequently, we received comments from Samsung Korea and LG objecting to the petitioner's scope exclusion request, and comments from GE and Staber supporting the request. We also contacted U.S. Customs and Border Protection (CBP) seeking its input on whether the petitioner's proposed scope exclusion request, if granted by the Department, would be enforceable by CBP. Based on the comments received from the interested parties and information provided by CBP, we are amending preliminarily the scope of the investigations to exclude top-load washers with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet. It is within the Department's authority to define the scope of an investigation. See section 732(b)(1) of the Act. Further, it is the Department's practice to provide ample deference to the petitioner with respect to the merchandise from which it intends to seek relief. See memorandum entitled "Preliminary Exclusion of Top-Load Washing Machines with a Rated Capacity Less than 3.70 Cubic Feet from the Scope of the Investigations," dated concurrently with this notice, for further discussion.

Application of Facts Available

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, apply "the facts otherwise available" if (1) necessary information is not available on the record of an antidumping proceeding or (2) an interested party or any other person:

(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority” if the information is submitted in a timely manner, can be verified, is not so incomplete that it cannot be used, and the interested party acted to the best of its ability in providing the information.

In this case, Samsung and Whirlpool stated in letters dated March 23 and March 26, 2012, respectively, that they would not be responding to the Department’s questionnaire or otherwise participating in this investigation. Thus, the Department preliminarily determines that necessary information is not available on the record to serve as the basis for the calculation of margins for Samsung and Whirlpool. See section 776(a)(1) of the Act. We also preliminarily find that Samsung and Whirlpool have withheld information requested by the

Department and significantly impeded the proceeding. See section 776(a)(2)(A) and (C) of the Act.¹³

Therefore, pursuant to sections 776(a)(1) and 776(a)(2)(A) and (C) of the Act, the Department preliminarily determines that the use of the facts otherwise available is warranted for Samsung and Whirlpool. Because Samsung and Whirlpool failed to provide any information in this investigation, sections 782(d) and (e) of the Act are not applicable in this case.

Application of Adverse Facts Available and Selection of Adverse Facts Available Rate

Section 776(b) of the Act provides that, if the Department finds an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.¹⁴ Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁵ Furthermore, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.”¹⁶ In this case, the Department has determined that Samsung and Whirlpool failed to cooperate to the

¹³ See also, e.g., Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review, 74 FR 17149 (April 14, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁴ See, e.g., Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile, 72 FR 70295, 70297 (December 11, 2007).

¹⁵ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994) (SAA) at 870.

¹⁶ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR at 27340; see also Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

best of their ability in this proceeding by refusing to participate in the Department's investigation. Therefore, the Department has preliminarily determined an adverse inference is warranted in selecting from the facts otherwise available pursuant to section 776(b) of the Act.¹⁷

Corroboration of Secondary Information Used as Adverse Facts Available

Where the Department applies adverse facts available (AFA) because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c) and the SAA at 868-870. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Normally, it is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information.¹⁸ The rates in the petition, as adjusted at initiation, range from 27.21 percent to 72.41 percent. See Initiation Notice, 77 FR at 4011.

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information

¹⁷ See, e.g., Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 18369 (April 11, 2005), unchanged in Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review, 70 FR 37759 (June 30, 2005) (KSC/JFE's counsel contacted the Department to state that KSC/JFE would not be submitting a response to the Department's antidumping questionnaire).

¹⁸ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland, 69 FR 77216 (December 27, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland, 70 FR 28279 (May 17, 2005).

obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. The SAA clarifies that “corroborate” means the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.¹⁹ The Department’s regulations state that independent sources used to corroborate such evidence may include, for example, published prices lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation and to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this preliminary determination. See Antidumping Investigation Initiation Checklist, dated January 19, 2012 (Initiation Checklist), at 6 through 11. See also Initiation Notice, 77 FR at 4010 - 4011. We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the U.S. price and normal value (NV) calculations used in the petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the petition or in

¹⁹ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and partial Termination of Administrative Reviews, 62 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

supplements to the petition that corroborates key elements of the U.S. price and NV calculations used in the petition to derive estimated margins. Id.

We have selected the petition rate of 72.41 percent (as adjusted at initiation) as the appropriate AFA rate to apply in this case. This rate achieves the purpose of applying an adverse inference, i.e., it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.²⁰

Based on our examination of the information, as discussed in detail in the Initiation Checklist and the Initiation Notice, we consider the petitioner's calculation of the U.S. price and NV underlying the 72.41 percent rate to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information, we preliminarily determine that the 72.41 percent margin is reliable for purposes of this investigation.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin.²¹ Similarly, the Department does not apply a margin that has been discredited or judicially invalidated.²²

²⁰ See KYD, Inc. v. United States, 607 F.3d 760, 767 (Fed. Cir. 2010).

²¹ For example, in Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as best information available (the predecessor to facts available), because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin.

²² See D & L Supply Co. v. United States, 113 F.3d 1220, 1221 (Fed. Cir. 1997).

The 72.41 percent rate reflects commercial practices of the washer industry and, as such, is relevant to Samsung and Whirlpool. The courts have acknowledged that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.²³ Such consideration typically encompasses the commercial behavior of other respondents under investigation and the selected AFA rate is gauged against the margins we calculate for those respondents. Therefore, we compared the model-specific margins we calculated for Electrolux for the POI to the adjusted petition rate of 72.41 percent. We found margins calculated for Electrolux in this investigation in the range of and above the 72.41 percent petition margin. See memorandum entitled “Corroboration of Secondary Information Used as Adverse Facts Available,” dated concurrently with this notice. Accordingly, the AFA rate is relevant as applied to Samsung and Whirlpool for this investigation because it falls within the range of model-specific margins we calculated for Electrolux in this investigation. A similar corroboration methodology has been upheld by the Court of Appeals for the Federal Circuit.²⁴ Further, this methodology is consistent with our past practice.²⁵

Accordingly, we have determined that the AFA rate of 72.41 percent is corroborated to the extent practicable as provided in section 776(c) of the Act. See also 19 CFR 351.308(d).

²³ See, e.g., Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1334 (1999).

²⁴ See PAM, S.p.A. v. United States, 582 F.3d 1336, 1340 (Fed. Cir. 2009).

²⁵ See Narrow Woven Ribbons With Woven Selvedge From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 41808, 41811 (July 19, 2010).

Therefore, with respect to Samsung and Whirlpool, we have used, as AFA, the adjusted petition margin of 72.41 percent.

Targeted Dumping Allegation

The statute allows the Department to employ the average-to-transaction margin-calculation methodology under the following circumstances: (1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. See section 777A(d)(1)(B) of the Act.

On June 11, 2012, the petitioner submitted an allegation of targeted dumping with respect to Electrolux and asserted that the Department should apply the average-to-transaction methodology in calculating the margin for Electrolux. In its allegation, the petitioner asserted that there are patterns of U.S. sales prices for comparable merchandise that differ significantly among time periods, customers, and regions. See the Petitioner's Allegations of Targeted Dumping submission, dated June 11, 2012, at 3-6.²⁶

A. Targeted Dumping Test

We conducted time-period, customer, and regional targeted dumping analyses for Electrolux using the methodology we adopted in Nails and recently articulated in Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less

²⁶ The petitioner relied on the Department's targeted dumping test in Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008), and Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) (collectively Nails), as applied in more recent investigations such as Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico, 77 FR 17422 (March 26, 2012) (Refrigerators).

Than Fair Value, 76 FR 64318 (October 18, 2011) (Wood Flooring) and accompanying Issues and Decision Memorandum at Comment 4, and Refrigerators.

The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement. See section 777A(d)(1)(B)(i) of the Act, Nails, Wood Flooring, and Refrigerators. In this test we made all price comparisons on the basis of identical merchandise (i.e., by control number or CONNUM). We based all of our targeted dumping calculations on the U.S. net price which we determined for U.S. sales by Electrolux in our standard margin calculation. For further discussion of the test and results, see memorandum entitled “Preliminary Determination Margin Calculation for Electrolux Home Products, Corp. N.V. and Electrolux Home Products De Mexico, S.A. de C.V.” (Electrolux Calculation Memo), dated concurrently with this notice. As a result of our analysis, we preliminarily determine that there is a pattern of U.S. prices for comparable merchandise that differs significantly among certain time periods, customers, and regions for Electrolux, in accordance with section 777A(d)(1)(B)(i) of the Act and our current practice as discussed in Nails, Wood Flooring, and Refrigerators.

B. Price Comparison Method

Section 777A(d)(1)(B)(ii) of the Act states that the Department may compare the weighted average of the NV to export prices (EPs) (or constructed export prices (CEPs)) of individual transactions for comparable merchandise if the Department explains why differences in the patterns of EPs (or CEPs) cannot be taken into account using the average-to-average methodology. As described above, we preliminarily determine that, with respect to sales by Electrolux, for certain time periods, customers, and regions there was a pattern of prices that differed significantly.

For Electrolux, we find that these differences can be taken into account using the average-to-average methodology because the average-to-average methodology does not conceal differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group. Therefore, for the preliminary determination, we find that the standard average-to-average methodology takes into account the price differences because the alternative average-to-transaction methodology yields no material difference in the margin. Accordingly, for this preliminary determination we have applied the standard average-to-average methodology to all U.S. sales made by Electrolux. See the Electrolux Calculation Memo for further discussion.

Fair Value Comparisons

To determine whether sales of washers from Mexico to the United States were made at LTFV, we compared the CEP to the NV, as described in the “Constructed Export Price” and “Normal Value” sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared weighted average CEPs to weighted-average NVs for Electrolux. See “Targeted Dumping Allegations” section, above.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Electrolux in the third country, Canada, during the POI that fit the description in the “Scope of Investigation” section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the third country (Canadian) market, where appropriate. See “Home Market Viability” section of the notice for further discussion. Where there were no sales of identical merchandise in the Canadian market made in the ordinary course of trade to compare to U.S.

sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by Electrolux in the following order of importance: finished unit or subassembly; load, agitator and axis type; capacity measurement; drying system; finish; user interface display; specialty cycle; door/lid material; motor type; water heater; and shoecare function.

Constructed Export Price

For all U.S. sales made by Electrolux we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was first sold (or agreed to be sold) in the United States after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

We based CEP on the packed prices to unaffiliated purchasers in the United States. We used the earlier of shipment or invoice date as the date of sale for Electrolux's CEP sales, in accordance with our practice.²⁷

We adjusted the starting price by the amount of billing adjustments reported by Electrolux. We made deductions for rebates and discounts, as appropriate. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign customs fees, foreign and

²⁷ See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11.

U.S. inland insurance, U.S. inland freight (i.e., freight from factory to warehouse and freight from warehouse to the customer), and pre-sale warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (i.e., imputed credit expenses, advertising expenses, and warranty expenses), and indirect selling expenses (including inventory carrying costs). See the Electrolux Calculation Memo.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Electrolux on its sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Electrolux's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act.

In this investigation, we determined that Electrolux's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used sales to Canada, Electrolux's largest third country market, comprised of merchandise that is similar and/or identical to the subject

merchandise exported to the United States, as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

B. Affiliated Party Transactions and Arm's-Length Test

During the POI, Electrolux sold foreign like product to affiliated customers. To test whether Electrolux's sales to affiliated customers were made at arm's-length prices, we compared, on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all applicable billing adjustments, discounts and rebates, movement charges, direct selling expenses and packing expenses. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c).²⁸ Sales to affiliated customers in the comparison market that were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. See section 771(15) of the Act and 19 CFR 351.102(b).

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁹ In

²⁸ See Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 39615 (August 7, 2009), unchanged in Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review, 75 FR 6631 (February 10, 2010).

²⁹ Id.; see also Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and

order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (i.e., the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (i.e., NV based on either home market or third country prices),³⁰ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³¹

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (i.e., no LOT adjustment was possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.³²

Notice of Intent to Revoke Antidumping Duty Order in Part, 75 FR 50999, 51001 (August 18, 2010) (OJ from Brazil) and accompanying Issues and Decision Memorandum at Comment 7.

³⁰ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A expenses, and profit for CV, where possible.

³¹ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

³² See, e.g., OJ from Brazil, 75 FR at 51001.

In this investigation, we obtained information from Electrolux regarding the marketing stages involved in making the reported comparison market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Our LOT finding is summarized below.

Electrolux sold washers only to retailers and builders/wholesalers in both the Canadian and U.S. markets. Electrolux reported that it made CEP sales in the U.S. market through the following four channels of distribution: (1) the customer picks up the merchandise from its El Paso, Texas, warehouse; (2) its U.S. affiliate (i.e., Electrolux Major Appliances North America (UWA)) delivers the merchandise from the El Paso warehouse to the customer; (3) the customer picks up the merchandise from a UWA regional distribution center (RDC); and (4) UWA delivers the merchandise from the RDC to the customer. For purposes of examining the different selling activities reported by Electrolux for sales made through each U.S. channel of distribution, we grouped the selling activities into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

We compared the selling activities Electrolux performed in each channel, exclusive of the selling activities performed by its U.S. affiliate, and found that either there is no difference in the selling functions performed by Electrolux between the channels (i.e., freight and delivery services) or Electrolux did not perform the selling function at all (i.e., sales and marketing, inventory maintenance and warehousing, and warranty and technical support) for each channel. As a result, we found that Electrolux performed the same selling functions for all four U.S. distribution channels. Accordingly, we determined that all of Electrolux's CEP sales constitute one LOT.

With respect to the Canadian market, Electrolux reported the following three channels of distribution: (1) its Canadian affiliate (i.e., Electrolux Canada Corp. (CDW)) arranges with UWA to have the merchandise delivered from the El Paso warehouse to CDW's customer; (2) the customer picks up the merchandise from CDW's RDC; and (3) CDW delivers the merchandise from the RDC to the customer. In determining whether separate LOTs exist in the Canadian market, we compared the selling functions performed by Electrolux and its affiliates CDW and UWA on behalf of the Canadian sales. For purposes of examining the different selling activities reported by Electrolux and its affiliates for sales made through each Canadian channel of distribution, we grouped the selling activities into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

We compared the selling activities Electrolux and its affiliates collectively performed in each channel, and found that there is no difference in the selling functions performed between the channels. As a result, we found that Electrolux performed the same selling functions for all three Canadian market distribution channels. Accordingly, we determined that all Canadian sales constitute one LOT.

Finally, we compared the CEP LOT to the Canadian market LOT and found that the selling functions performed for Canadian market sales are either not performed for CEP sales or are performed at a significantly higher degree of intensity compared to the selling functions performed for U.S. sales. Specifically, we found that three of the four selling functions (i.e., sales and marketing, inventory maintenance and warehousing, and warranty and technical support) are performed by Electrolux in the Canadian market but not in the U.S. market, and the remaining selling function (i.e., freight and delivery services) was performed by Electrolux

in the Canadian market at a higher degree of intensity than in the U.S. market. Therefore, we determined that the NV LOT is at a more advanced stage of distribution than the CEP LOT and that no LOT adjustment was possible. Accordingly, we granted a CEP offset pursuant to section 773(a)(7)(B) of the Act.

D. Cost of Production Analysis

Because Electrolux did not have a viable home market, on May 21, 2012, the petitioner alleged that it made third country sales below the COP and, therefore, requested that the Department initiate a sales-below-cost investigation. On June 5, 2012, the Department initiated a sales-below-cost investigation of Electrolux. See memorandum entitled “The Petitioner’s Allegation of Sales below the Cost of Production for Electrolux Home Products, Corp. N.V. and Electrolux Home Products, Inc.,” dated June 5, 2012.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses, interest expenses, and comparison market packing costs. See “Test of Comparison Market Sales Prices” section below for treatment of comparison market selling expenses. Based on the review of record evidence, Electrolux did not appear to experience significant changes in the cost of manufacturing during the POI. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

We relied on Electrolux’s submitted COP data but adjusted this data to account for labor and overhead provided by affiliated parties at transfer prices, in accordance with section 773(f)(2) of the Act. See memorandum entitled “Cost of Production and Constructed Value

Adjustments for the Preliminary Determination - Electrolux Home Products, Corp. N.V. and Electrolux Home Products, Inc.,” dated July 27, 2012, for further discussion.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, discounts and rebates, movement charges, and actual direct and indirect selling expenses. In determining whether to disregard comparison market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent’s sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent’s sales of a given product during the POI are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Electrolux's comparison market sales during the POI were at prices less than the COP and, in addition, the below-cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on packed prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for discounts, rebates, and billing adjustments. We also made deductions for movement expenses, including inland freight, customs fees, brokerage and handling, insurance, and warehousing expenses, under section 773(a)(6)(B)(ii) of the Act. We offset movement expenses, where appropriate, by the amount of freight revenue received by Electrolux. Consistent with our practice, we capped the amount of freight revenue allowed as an offset by the amount of the freight expense incurred.³³ In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (i.e., warranty and advertising expenses).

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the

³³ See, e.g., OJ from Brazil and accompanying Issues and Decision Memorandum at Comment 2.

comparison market sales or the indirect selling expenses deducted from the starting price in calculating CEP. See the Electrolux Calculation Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all imports of subject merchandise from Electrolux, Samsung, Whirlpool, and “All Others” that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register.

We will instruct CBP to require a cash deposit³⁴ equal to the weighted-average amount by which the NV exceeds CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

³⁴ See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations, 76 FR 61042 (October 3, 2011).

<u>Exporter/Manufacturer</u>	<u>Weighted-Average Margin Percentage</u>
Electrolux Home Products, Corp. NV/ Electrolux Home Products De Mexico, S.A. de C.V.	33.30
Samsung Electronics Mexico S.A. de C.V.	72.41
Whirlpool International S. de R.L. de C.V.	72.41
All Others	33.30

The “All Others” rate is derived exclusive of all de minimis or zero margins and margins based entirely on AFA. Specifically, this rate is based on the margin calculated for Electrolux in this case.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

The Department will disclose to parties the calculations performed in connection with this preliminary determination within five days of the date of publication of this notice. See 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal

briefs must be filed five days from the deadline date for case briefs. See 19 CFR 351.309(d).

A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Case briefs must present all arguments that continue to be relevant to the Department's final determination, in the submitter's view. See 19 CFR 351.309(c)(2). Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. See 19 CFR 351.310(c). If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the Federal Register.

This determination is published pursuant to sections 733(f) and 777(i) of the Act and 19 CFR 351.205(c).

Paul Piquado
Assistant Secretary
for Import Administration

July 27, 2012
(Date)